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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN JAMES MATTSON,

Defendant and Appellant.

A132978

(Contra Costa County  
Super. Ct. No. 5-100611-3)

**INTRODUCTION**

Defendant Brian James Mattson timely appeals from a judgment entered on his plea. He contends the trial court erred when it imposed (1) a probation report fee of \$176 pursuant to Penal Code section 1203.1b and (2) a criminal justice administration fee of \$340 (CJA fee) pursuant to Government Code sections 29550 et seq. At sentencing, defendant objected to imposition of both fees on the grounds that he did not have the ability to pay them. Nevertheless, the Attorney General argues defendant has forfeited his claims, but concedes that if the claims are not forfeited, the probation report fee was improperly imposed. As to the CJA fee, the Attorney General argues the fee is mandatory and requires no finding of ability to pay.

We find no forfeiture and accept the Attorney General's concession as to the probation report fee. Therefore, we will remand the matter to the trial court for a determination of defendant's ability to pay. With respect to the CJA fee, we decline to decide whether the fee is mandatory or discretionary, since the court neglected to identify the statutory authorization for the fee. However, since we are remanding the matter for

an ability to pay determination, we will also direct the court to identify the statutory basis for the CJA fee and take into account defendant's ability to pay, if appropriate, under the identified statute. We otherwise affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On September 18, 2007, police officers employed by the City of Brentwood in Contra Costa County searched the residence and garage belonging to defendant and his wife and discovered "marijuana cultivation in the garage."

On August 10, 2011, pursuant to a negotiated disposition, defendant Mattson entered pleas of no contest to possession of at least 28.5 grams of marijuana, a misdemeanor, and cultivation of marijuana, a felony. (Health & Saf. Code, §§ 11357, subd. (c), 11358.) A third count, charging possession of marijuana for sale, was dismissed. (Health & Saf. Code, § 11359.) All charges against defendant's wife were also dismissed. As part of the bargain, defendant was promised that he would be placed on probation for 18 months and that if he successfully completed probation his felony conviction would be dismissed nunc pro tunc. Additionally, he was not required to sign an appeal waiver.

Immediately upon entering his pleas, defendant was placed on court probation and ordered to pay restitution fines pursuant to Penal Code sections 1202.4 and 1202.44. He was also "ordered to contact the court collections and compliance unit at Alliance One to make payments of fines and fees and notify CCU and Alliance One of any change of your address or telephone number within 10 days."

When the court imposed a probation report fee of \$176, and a CJA fee of \$340, defense counsel objected: "And, Judge, let me interpose here. For those fines and fees, I do object to the imposition of those fines and fees. I believe the court has to find present ability to pay. I know that my client and his wife are on a very limited income. [A]nd I don't think that he has the ability to pay. [¶] I know that the \$176 fee what we've been doing is allowing the probation to sort of make an assessment of the ability to pay. [T]he \$340 fee I think the court can only impose if there's a present ability to pay, and I honestly, Judge, under the circumstances and the fines and fees that the court already has

imposed . . . I don't think that Mr. Mattson has the ability to pay them." The court responded: "And I appreciate those concerns, but I do not have sufficient information before me today to make that determination. When Mr. Mattson goes to CCU, they will take all of his financial information and assess his ability to pay. If he feels at that time that there is a reason why he cannot pay, he can always come back to court at that time and then I would have the financial information before me." Defense counsel reiterated: "Okay. Well, for the record, I am objecting."

The court did not specify the statutory basis for the CJA fee. The probation report, which was dictated and typed April 23, 2009, did not mention any fines or fees. Nor did it mention any right to an ability to pay hearing.

Under the heading "Additional Terms," the probation order contains a checked box next to the words "\$340 CJA." The order also states, "Although not a condition of Probation, you are ordered to pay the following fees: . . . \$176 Probation Report."

A separate one-page form, dated and signed the same day as defendant's plea, sentencing hearing, and probation order, is entitled "Payment of Fines and Fees." It states that as to fines and fees that *are not* a condition of probation, "You are ordered to pay your fines and fees . . . in full within **90 days**" to Alliance One, located in the State of Washington. (Original italics & bold.) The form further stipulates that if the probationer is unable to pay these fines and fees within 90 days, he or she must contact Alliance One, at which time "[a] collections officer will review with you whether you are able to pay all or part of your fines and fees. If it is determined that you are able to pay a certain amount, and you do not agree, you have the right to a hearing in this Court to decide what amount, if any, you must pay." The form goes on to describe the probationer's rights at this hearing, and concludes: "If you do not contact Alliance One, you waive (give up) your right to a hearing and the full amount of your court ordered fines and fees which *are not* a condition of your probation will be due within **90 days** from the date of your sentence." (Original bold.)

As to fines and fees which *are* a condition of probation, the form states: "You are ordered to pay your fines and fees . . . in full by the end of your probation. You have the

same right to a hearing as described above regarding these fines and fees if you do not agree with Alliance One's assessment of your ability to pay. [¶] If you desire such a hearing, you must contact your attorney or probation officer to request a hearing."

Defendant signed the form, indicating that he had received a copy of it and understood and agreed to its terms.

## **DISCUSSION**

### ***Probation Report Fee***

Defendant contends that the probation report fee should not have been assessed because neither the superior court nor the probation department determined that he had the ability to pay it. The Attorney General argues that defendant has forfeited the claim because his signature on the "Payment of Fines and Fees" bound him to the remedy provided in the form and constituted a waiver of his right to contest, on appeal, his ability to pay the fines and fees ordered by the trial court. She also argues this case is governed by *People v. Valtakis* (2003) 105 Cal.App.4th 1066 (*Valtakis*). We reject both arguments and find no forfeiture.

First, *Valtakis* is inapposite because here defendant *objected* to the imposition of the fines and fees in his case. Second, defendant specifically negotiated and preserved his right to appeal as a condition of his acceptance of the plea bargain. Finally, a condition precedent to imposition of a probation report fee is the determination that defendant has the ability to pay it. As provided in pertinent part by Penal Code section 1203.1b, subdivision (b): "The court shall order the defendant to pay the reasonable costs if it determines that the defendant has the ability to pay those costs based on the report of the probation officer, or his or her authorized representative." The statute also sets forth elaborate procedures for determining a particular defendant's ability to pay. It also specifies that defendant has a right to a hearing before the court if it disagrees with the probation officer's initial assessment of his ability to pay. The defendant may give up his or her right to a hearing at which the court determines his or her ability to pay and the payment amount, but the waiver must be "knowing and intelligent." (Pen. Code, § 1203.1b, subd. (a).) Here, none of the statutorily mandated procedures were followed.

The probation report made no mention of probation fees and made no determination of defendant's ability to pay. It did not advise defendant of his right to a separate hearing on that issue. By signing the "Payment of Fines and Fees" form, defendant could not have forfeited statutory rights of which he was never told and which were not even mentioned in the form.

The Attorney General concedes that if the claim is not waived, it is meritorious, because Alliance One is not an entity authorized by law to conduct ability to pay assessments. As respondent notes, "Alliance One serves as the collection agency for all debts owed to the Contra Costa County Superior Court." Respondent informs us that she "has not found any authority authorizing the county to utilize its private collection agency to perform the assessments required under Penal Code section 1203.1b, subdivisions (a) and (f)." Nor have we. However, Penal Code section 1203.1b, subdivision (a) expressly gives the probation department the option of designating an "authorized representative," and the record provides no basis for finding that Alliance One has, or has not, been so designated by the probation department. Nevertheless, despite the statutory mandate and defendant's timely objection, neither the probation department nor the court made an ability to pay determination, or followed the procedures set forth by statute. Therefore, we must remand the matter for a determination of defendant's ability to pay the probation report fee.

### ***Criminal Justice Administration Fee***

The trial court also imposed a CJA fee of \$340. Neither the court, nor the minute order, specified the statutory basis for the fee. "Government Code sections 29550, 29550.1, and 29550.2 govern fees for booking or otherwise processing arrested persons into a county jail. To some degree, they vary based on the identity of the arresting agency. Arrests made by a 'city, special district, school district, community college district, college, university or other local arresting agency' are governed by Government Code sections 29550, subdivision (a)(1) and 29550.1. Arrests made by a county are governed by Government Code section 29550, subdivision (c) and those made by 'any governmental entity not specified in Section 29550 or 29550.1' are governed by

Government Code section 29550.2, subdivision (a). . . .” (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1399, fn. 6 (*Pacheco*)).<sup>1</sup>

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<sup>1</sup> Government Code section 29550 provides in relevant part:

“(a)(1) [A] county may impose a fee upon a city. . . for reimbursement of county expenses incurred with respect to the booking or other processing of persons *arrested by an employee of that city. . . where the arrested persons are brought to the county jail for booking or detention.* The fee imposed by a county pursuant to this section shall not exceed the actual administrative costs . . . incurred in booking or otherwise processing arrested persons. [A] county may submit an invoice to a city . . . for these expenses incurred by the county on and after July 1, 1990.

[¶] . . . [¶]

“(c) *Any county whose officer or agent arrests a person* is entitled to recover from the arrested person a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest, whether or not it is the offense for which the person was originally booked. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, including applicable overhead costs incurred in booking or otherwise processing arrested persons.

“(d) When the court has been notified in a manner specified by the court that a criminal justice administration fee is due the agency: [¶] (1) A judgment of conviction may impose an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution may be issued on the order in the same manner as a judgment in a civil action, but shall not be enforceable by contempt. [¶] (2) *The court shall, as a condition of probation, order the convicted person, based on his or her ability to pay, to reimburse the county for the criminal justice administration fee, including applicable overhead costs.*

“(e) As used in this section, ‘actual administrative costs’ include only those costs for functions that are performed in order to receive an arrestee into a county detention facility. Operating expenses of the county jail facility including capital costs and those costs involved in the housing, feeding, and care of inmates shall not be included in calculating ‘actual administrative costs.’ . . .” (*Italics added.*)

Government Code section 29550.1 provides in relevant part: “*Any city . . . whose officer or agent arrests a person* is entitled to recover any criminal justice administration fee imposed by a county from the arrested person if the person is convicted of any criminal offense related to the arrest. A judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the city . . . for the criminal justice administration fee.” (*Italics added.*)

Here, the record shows that defendant was arrested by a police officer employed by the City of Brentwood. The record does not show where he was booked. Nor does the record reveal to which agency—city or county—the CJA fee was made payable.

Citing the rule that statutes must be read in harmony (*People v. Murphy* (2001) 25 Cal.4th 136, 142), the Attorney General argues that the CJA fee for reimbursement of expenses related to booking is mandatory; that is, the fee must be imposed regardless of defendant's ability to pay. She arrives at this conclusion by reading the relevant statutes to mean that the ability to pay provision contained in Government Code section 29550, subdivision (d) applies only when "a county entity is the arresting agency" and not when a city is the arresting agency. She also argues that reference to "'actual administrative costs' is clearly a requirement for the county to determine a fixed amount representing an average cost for 'booking or otherwise processing arrested persons' " and need not be found in each individual's case.

Under the Attorney General's reasoning, persons arrested by county law enforcement officials (Gov. Code, § 29550, subd. (c)), and persons arrested by "any governmental entity not specified in Section 29950 or 29550.1" (Gov. Code, § 29550.2), are entitled to an ability to pay determination, but persons arrested by law enforcement

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Government Code section 29550.2 provides in relevant part:

"(a) Any person *booked into a county jail* pursuant to any arrest by any governmental entity *not specified in Section 29550 or 29550.1* is subject to a criminal justice administration fee for administration costs incurred in conjunction with the arresting and booking if the person is convicted of any criminal offense relating to the arrest and booking. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, as defined in subdivision (c) . . . incurred in booking or otherwise processing arrested persons. *If the person has the ability to pay*, a judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the county for the criminal justice administration fee.

"(b) All fees collected by a county as provided in this section *and Section 29550*, may be deposited into a special fund in that county which shall be used exclusively for the operation, maintenance, and construction of county jail facilities." (Italics added.)

officials employed by “a city, special district, school district, community college district, college, or university” (Gov. Code, § 29550.1) are not.

“Our fundamental task . . . is to ascertain the Legislature’s intent so as to effectuate the law’s purpose. [Citation.] [W]e construe the words in question ‘ “in context, keeping in mind the nature and obvious purpose of the statute . . . .” [Citation.]’ (*Ibid.*) We must harmonize ‘the various parts of a statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole.’ [Citations.] We must also avoid a construction that would produce absurd consequences, which we presume the Legislature did not intend. [Citations.]” (*People v. Mendoza* (2000) 23 Cal.4th 896, 907–908.)

In general, “recoupment statutes reflect a strong legislative policy in favor of shifting costs arising from criminal acts back to convicted defendants and replenishing public coffers from the pockets of those who have directly benefited from county expenditures.” (*People v. Bradus* (2007) 149 Cal.App.4th 636, 643.) Specifically, the Legislative Counsel’s Digest of a 1993 bill that amended Government Code section 29550.1 noted that under then-existing law, a judgment of conviction was authorized to include an order for the payment of the CJA fee. The express purpose of the amendment was to “*require* that the judgment of conviction contain an order for payment of the fee.” (Legis. Counsel’s Dig., Assem. Bill No. 2286 (5 Stats. 1993–1994 Reg. Sess.) Summary Dig., p. 364, italics added.) However, when viewed in context with other laws in the same statutory scheme enacted for the purpose of recouping booking fees, we can find no clearly expressed legislative intent to condition the *amount* of the fee on the agency which effected the arrest. However, we need not decide whether the Legislature intended such a problematic consequence on the record before us.<sup>2</sup>

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<sup>2</sup> Because of the state of the record, we do not reach the arguments discussed in *People v. Mason* (2012) 206 Cal.App.4th 1026 [2012 Cal.App. Lexis 653]. (See also *People v. Almanza* (June 26, 2012, E053366) \_\_\_\_ Cal.App.4th \_\_\_\_ [2012 Cal.App. Lexis 746].) The trial court may look to those cases for guidance when it determines the CJA fee, if any.



Here, the record fails to show the statutory basis for the fee, or if defendant was booked at the county jail. Moreover, the record does not show that the fee imposed reflects the actual administrative costs incurred. (Gov. Code, §§ 29550, subds. (a)(1), (c); 29550.2, subd. (a); *Pacheco, supra*, 187 Cal.App.4th at p. 1400.) In addition, without fixing the amount of any CJA fee that may be due, the court cannot make a reasoned determination of defendant’s ability to pay the probation report fee, insofar as that determination must “tak[e] into account any amount that the defendant is ordered to pay in fines, assessments, and restitution.” (Pen. Code, § 1203.1b, subd. (a).) For these reasons, remand for determination of defendant’s ability to pay the CJA fee is also required.

### **DISPOSITION**

The matter is remanded for determination of defendant’s ability to pay the probation report fee and the CJA fee. In all other respects, the judgment is affirmed.

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Marchiano, P.J.

We concur:

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Dondero, J.

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Banke, J.